

ORDINANCE 4012, 2016

**AN ORDINANCE AMENDING ARTICLE IV, CHAPTER 22 OF THE CODE OF
ORDINANCE OF THE CITY OF WOODSTOCK, GEORGIA**

Whereas, the City of Woodstock, Georgia (hereinafter sometimes referred to as the "City") is a municipality duly formed and existing pursuant to Georgia Law; and

Whereas, the 1983 Constitution of the State of Georgia provides for the self government of municipalities without the necessity of action by the General Assembly¹; and

Whereas, the City of Woodstock, Georgia has the legislative power to adopt clearly reasonable ordinances, resolutions or regulations relating to its property, affairs and local government for which no provision has been made by general laws, and which are not inconsistent with the Constitution or any charter provision applicable thereto²; and

Whereas, the City Council of the City of Woodstock, Georgia desires to amend Article IV of the Code of Woodstock, Georgia as set forth herein.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL ORDAINS, by the lawful authority vested in them as follows:

Section 1. That existing Article IV of Chapter 22 is hereby deleted and replaced with Exhibit "A" attached hereto; and

Section 2. Should any provisions of this Ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any provision thereof other than the provisions specifically declare to be invalid. The Mayor and Council hereby declare that it would have passed this Ordinance and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses or phrases may be declared illegal, invalid or unconstitutional.

¹ Ga. Const. 1983, Article IX, Section II, Paragraph II provides in pertinent part as follows:

"The General Assembly may provide by law for the self government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to the municipalities may be dealt with without the necessity of action by the General Assembly."

² O.C.G.A. §36-35-3(a) provides as follows:

"(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable hereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code Section. This Code Section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly, shall not pass any local law to repeal, modify or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6."

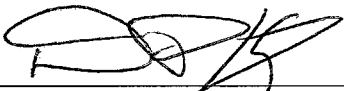
Section 3. This Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF
WOODSTOCK, GEORGIA, THIS 11 DAY OF July, 2016.

First Reading Date: 6/13/16

Public Hearing Date: N/A

Final Adoption Date: 7-11-16



DONNIE HENRIQUES, MAYOR
CITY OF WOODSTOCK, GEORGIA



RHONDA L. PEZZELLO, CLERK
CITY OF WOODSTOCK

REVIEWED FOR LEGAL CONTENT

ELDON L. BASHAM
CITY ATTORNEY

EXHIBIT A

ARTICLE IV. – MASSAGE THERAPY AND RELATED ESTABLISHMENTS

Sec. 22-137. - Purpose.

It is the purpose of this Article to regulate the professions of Massage Therapy and Bodywork Therapy as provided under Georgia law. It is a further purpose to regulate the operation of Massage, Spa, and Bodywork Establishments as an exercise of the city's police power in order to protect the health, safety and general welfare of the citizens of the city. To the extent that relevant Georgia law is modified or amended, so shall this Article be immediately modified or amended.

Sec. 22-138. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bodywork Therapist means one who engages in the practice of a Bodywork Therapy discipline(s).

Bodywork Therapy means a general term that refers to a group of body-based approaches to treatment that emphasize manipulation and realignment of the body's structure in order to improve its function as well as the client's mental outlook. The Georgia Massage Therapy Practice Act, O.C.G.A. § 43-24A-1 et seq., exempts from regulation certain therapeutic industries, which for the purposes of this code are known as bodywork therapy. All industries exempt from regulation of the Georgia Massage Therapy Practice Act, as listed in O.C.G.A § 43-24A-19, now and as may be amended in the future, shall be required to apply for and receive a license as required by this Article.

Bodywork Therapy Establishment means any business, conducted in whatever form, where one or more Bodywork Therapists perform Bodywork Therapy on a site or premises, or portion thereof, for compensation. Bodywork Therapy Establishments shall not include any establishment exempted by this Article.

Employee means any person over 18 years of age, other than a Massage Therapist or Bodywork Therapist who renders any service in connection with the operation of a business licensed under this Article and receives compensation from the operator of the business or from a patron. For the purposes of this Article, Employee also includes all independent contractors.

Massage Therapy Establishment means any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person engages in or carries on any of the activities involved in massage. The term shall be inclusive of and interchangeable with massage parlor and massage business. This term shall not include hospitals or other professional health care establishments licensed as such separately by the state.

Massage Therapist mean a person holding an active state Massage Therapy license, issued by the Georgia Board of Massage Therapy, who administers massage or Massage Therapy for compensation. Pending status is not active status and shall not be included under this definition. Bodywork Therapists without an active state Massage Therapy license are not included in this definition.

Massage Therapy means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. The term includes complementary methods, including without limitation the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of

commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands; the term also includes determining whether Massage Therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. Massage Therapy shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities.

Spa Establishment means any business or commercial establishment operated to derive income from the provision of any of the following personal services: body wraps, hydro mineral wraps, body polish, body wash, baths and hydro tub soak, or other similar personal services purported to assist patrons with improving their physical condition or appearance and which require the patron to disrobe. This term shall not include hospitals or other professional health care establishments licensed as such separately by the state.

Sec. 22-139. - License required; scope of regulations

(1) A license issued in accordance with this Article is required prior practicing Massage Therapy or Bodywork Therapy, or operating a Massage Therapy Establishment or Bodywork Therapy establishment, spa, or related practice or business. "License" issued in compliance with this Article shall include:

(a) *Individual.* It is unlawful for any natural person to administer Massages Therapy or Bodywork Therapy without having obtained a license in accordance with the requirements of this Article.

(b) *Establishment.* It is unlawful for any person, natural or corporate, to operate an establishment providing Massage Therapy or Bodywork Therapy without having obtained a license therefor; or for any person, natural or corporate, to allow a Massage Therapist or Bodywork Therapist to practice without having obtained a license in accordance with the requirements of this Article.

(2) All licenses issued under this Article shall constitute a mere privilege to conduct the business so authorized during the term of the license or work permit only and shall be subject to all terms and conditions imposed by the city and state law.

(3) Nothing in this Article shall be construed to regulate, prevent or restrict in any manner:

(a) Any physician, chiropractor, or similar professional licensed and regulated by or through the state, while engaged in the practice of said profession; or

(b) Any hospital or other professional health care establishment separately licensed as such by the state; or

(c) Any other individual or entity expressly exempted from local legislation by the laws of the state.

Sec. 22-140. - License; application; information to be given.

Application – Basic Information. Any person desiring to practice Massage Therapy or Bodywork Therapy, or engage in the business of a Massage, Spa, or Bodywork Establishment shall, before engaging in that business, file an application for a license addressed to the City Manager. Such application shall be accompanied by a nonrefundable fee which will be set forth in the fee schedule by the City Council. The application shall be in writing, requiring detailed information as itemized below.

Applicants shall also provide proof of their application for business registration and the payment of the occupation tax and any other necessary fees such as for a building permit.

The applicant and for all Employees, and if the applicant is a corporation or partnership, such corporation or partnership shall submit the following information with regard to each Employee, independent contractor, agent and partner, general or limited, or co-owners, associated with the operation of the licensed establishment:

- (1) The full legal name, including all aliases, nicknames, pseudonyms or trade names currently or heretofore used by the applicant;
- (2) The current and all previous business and residence addresses within the three years immediately preceding the date of application;
- (3) Government issued identification verifying the age of 18 years or older
- (5) Height, weight and color of eyes and hair;
- (6) Two current photographs at least two inches by two inches in size;
- (7) The business, occupation or employment for three years immediately preceding the date of application;
- (8) Any massage or similar business license history of the applicant, including whether such person, in any previous operation in any jurisdiction, has had such a license revoked or suspended, the reason therefor, and any business activity or occupation subsequent to the action of suspension or revocation;
- (9) All convictions, pleas of guilty, or pleas of nolo contendere for violations of any law and the grounds therefore, with consent given to complete a criminal history
- (10) Shall be fingerprinted by the police department and such fingerprint card and record shall be attached as an exhibit to the application. Payment of all fees charged by the police department in connection with this requirement shall be the responsibility of the applicant;
- (11) If the applicant is a corporation, such corporation shall, in addition to the foregoing information, submit a complete list of the stockholders of the corporation, including names, current addresses and current occupations, and provide the name and address for its registered agent in the county;
- (12) If the applicant is an individual, the applicant must reside in the state and must submit written, reliable proof thereof.
- (13) A copy of the applicable state license for each Massage Therapist and other professions licensed by the state, now and as amended, shall be attached to the application. All other Employees not licensed by the state shall be listed with job title and description of duties performed. The Massage Therapy license issued by the state must be active and in good standing and resubmitted to the City upon expiration for verification;
- (14) Applicant must disclose other Massage Therapy Establishments owned and/or operated by the applicant using his or her Massage Therapy state license, including corporate names, DBA, and addresses;
- (15) Definition and complete details of the services to be provided;
- (16) Authorization for the city, its agents and Employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

(b) Application – Additional Requirements. For Bodywork Therapy and related professions not otherwise exempted by this Article or licensed by the state, the following additional application requirements shall apply:

- (1) Sworn affidavits of at least three bona fide residents of the city that the applicant is personally known to them and they believe the person to be of good moral character;
- (2) A certificate dated within 30 days of application from a physician licensed in the state, certifying that the applicant is in sound mental and physical health, and free of all contagious or communicable diseases; and
- (3) The applicant must provide a copy of the insurance policy covering property damage and bodily injury liability.

(c) Fees. All license applications shall be accompanied by a fee as elsewhere established by the city council to defray the costs associated with issuance of the licenses. All fees associated with the background check required by subsection (a)(10) of this section shall be the responsibility of the applicant and shall be in addition to the application fee.

(d) Renewal. Renewals must be done annually no later than January 1 with a renewal fee to be set forth in the fee schedule. State issued licenses shall be submitted with renewal and upon expiration of the state license, as necessary during a 12-month period.

22-141. - Qualifications.

Each applicant and all Employees under this Article, prior to making an application for a license to engage in the business, trade or profession of Massage Therapy, Spa, or Bodywork Therapy, must have the following qualifications and must furnish the following information when submitting an application:

- (1) The applicant, all owners, and all Employees must be at least 18 years of age and in case the applicant is a corporation, it must be created in or domesticated by the laws of the state.
- (2) The applicant must furnish a copy of identification such as a state driver's license/government issued I.D. Should the applicant be a corporation, it shall furnish a copy of identification such as a driver's license/state issued I.D. for all its agents or Employees actually engaged and working under the license.
- (3) Such other identification and information necessary to discover the truth of the matters required to be set forth in the application.
- (4) If engaging or purported to be a Massage Therapist or Massage Therapy Establishment, the applicant and all owners of the corporation, or establishment must be a licensed Massage Therapist as provided by state law. If not licensed by the state, but purporting to be engaged in Bodywork Therapy or another related profession, said applicant and establishment shall not advertise or hold itself out to be a "massage," "Massage Therapy" or "Spa" establishment. Massage Therapists shall post their state license in a conspicuous place in the licensed establishment at all times while the license remains valid. Said license shall remain valid at all times and upon expiration, the renewed license shall be submitted to the city immediately.
- (5) The applicant, all corporate organizers and co-owners, and Employee must be legal residents of the United States.
- (6) If the applicant owns or operates more than one Massage Therapy Establishment, as disclosed in Section 22-140, the applicant must provide a list of the state licensed Massage Therapist(s)

dedicated to providing services at the proposed Massage Therapy Establishment. In addition to the applicant, at least one additional state licensed Massage Therapist shall be dedicated to providing Massage Therapy services at the establishment.

- (7) No applicant, Employee, independent contractor, agent and partner, general or limited, or co-owners, associated with the operation of the licensed establishment shall have convicted or pled guilty or nolo contendere to a felony or to a misdemeanor involving moral turpitude or to any charge of a lascivious nature.

Sec. 22-142. - Issuance.

- (a) If the application required by this Article is submitted in proper form and is approved by the police department, Community Development Director, and building official, then the development services office is authorized to issue a license to the applicant upon the payment of any fees due.
- (b) The City Manager reserves the right to deny issuance of a license based on any information, which would be grounds for revocation or suspension under section 22-145, received during the application process. Any applicant so denied shall have the right to appeal such decision to the mayor and council.
- (c) A separate business registration must be applied for and obtained upon issuance of a license.
- (d) Compliance with all relevant zoning requirements shall be met in accordance with the City of Woodstock Land Development Ordinance, prior to issuance.

Sec. 22-143. - Work permits required.

- (a) A work permit shall be required for all Employees not possessing a state-issued Massage Therapist license or licensed to practice Bodywork Therapy under this Article. A work permit does not authorize an individual to perform any activity requiring a state license.
- (b) No licensee shall employ any person required to have any state mandated licenses or work permit pursuant to this section until such person has procured such license or permit. Licensees and all managers and/or supervisors of any Massage Therapy or Spa, or Bodywork Therapy Establishment are required by this section to inspect and verify that each Employee, required to have a valid state license or city work permit, has in his/her possession the required license or permit at all times, and failure to do so shall be a violation of this Article.
- (c) Any person required to obtain a work permit shall apply to the City Manager or designee for such permit. A separate work permit per individual is required for employment at each establishment within the city, complete with the information as required under Section 22-140 (a). Each work permit will expire on December 31 of the year that it is issued by the city and shall be renewed on or before its expiration. Persons applying for the permit shall make themselves available for investigation as may be required by the city. The nonrefundable fee for a work permit shall be set by the city council and shall remain in effect until modified or amended by the city council. The amount of the fee shall be stated in the fee schedule.
- (d) The City Manager or designee may suspend or revoke an Employee's work permit, following notice and hearing pursuant to this Article, and demand its return where the Employee violates the provisions of this chapter, any state law or applicable local ordinance.
- (e) An applicant for a work permit shall not have been convicted or pled guilty or nolo contendere to a felony or to a misdemeanor involving moral turpitude or to any charge of a lascivious nature.
- (f) A new search may be conducted on any person issued a work permit if the City Manager or designee receives information which warrants such a new search. If the new search reveals

evidence that warrants revocation of the permit, the permit may be revoked following notice and a hearing.

- (g) When the City Manager intends to deny or revoke any work permit, the City Manager or designee shall issue to the applicant or permit holder a letter setting forth the reasons for denial or revocation, and the letter shall notify the applicant of his or her right to hearing before the city council, which hearing shall be held in accordance with section 22-145.

Sec. 22-144. - Record of treatments to be kept.

It shall be the duty of any person granted a license under this Article to maintain correct and accurate records of the names and addresses of the persons receiving treatment at an establishment, the type of treatment administered, and the name of the person of the establishment administering the treatment. The records consisting of name, address and time of treatment shall be subject to inspection at any time by any code enforcement officer or city police officer.

Sec. 22-145. - Grounds for suspension or revocation; notice; hearings; refund.

- (a) A license granted under this Article shall be subject to revocation or suspension. Whenever, in the opinion of the City Manager, there is cause to revoke or suspend the license, a written notice of intention to revoke or suspend the license shall be furnished to the holder thereof. A hearing will be scheduled wherein the licensee may present his case before the mayor and council. The licensee shall receive five days' prior written notice of the time, date and place of any such hearing. After the hearing, the mayor and council may revoke or suspend the license if, in their discretion, revocation or suspension is in the best interest of the health, safety and welfare of the city. The license may be revoked or suspended upon one or more of the following grounds (but is not limited to such grounds):
 - (1) The licensee or any Employee of the licensee is guilty of fraud in the practice of massage, or fraud or deceit in obtaining a state license to practice Massage Therapy; or the previously active and duly issued state license has expired or been revoked by the state.
 - (2) The licensee or any Employee of the licensee is engaged in the practice of Massage Therapy under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - (3) The licensee or any Employee of the licensee is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person to the extent that he is unable to perform his duties.
 - (4) The licensee or any Employee of the licensee is guilty of fraudulent, false, misleading or deceptive advertising or practices.
 - (5) The licensee or any Employee has been convicted of or has pled guilty or nolo contendere to a felony or to a misdemeanor involving moral turpitude or to any charge of a lascivious nature.
 - (6) The original application, or renewal thereof, contains materially false information; or the licensee has deliberately sought to falsify information contained therein.
 - (7) The premises are in violation of the city's building or life safety codes.
 - (8) Noncompliance with any section of this Article.
 - (9) Any violation of state or local laws or ordinances.
- (b) The City Manager is delegated the authority to suspend any license under this Article for due cause in any emergency situation; and such suspension may be made effective immediately and remain in force until the next session of the municipal court.
- (c) When a license is so revoked, the city shall not be required to refund any portion of fees paid.

Sec. 22-146. - Patronage of massage establishments by minors.

- (a) Restricted. Persons under the age of 18 must have written consent from their parent or guardian prior to receiving treatment from applicants licensed under this Article.
- (b) Duty of applicant. It shall be the duty of the applicant to determine the age of the persons patronizing the establishment and to keep on file the original written consent form as required in subsection (a) of this section
- (c) Violation. A violation of this section shall be grounds for revocation of the license issued in accordance with this Article.

Sec. 22-147. - Hours of operation.

No applicant or establishment licensed under this Article shall conduct business or provide services except within and between the hours of 7:00 a.m. and 9:00 p.m. local time. However, if the establishment is located within a shopping center, the establishment may comply with the normal business hours during which the shopping center is open.

Sec. 22-148. - Signed copy of Article to be filed with license application.

All applicants must acknowledge this Article by signing an oath of affirmation of receipt, understanding and commitment to comply with the provisions of this Article. This sworn oath will be kept on file with the application by the tax clerk.

Sec. 22-149. - Operating requirements; unlawful acts and restrictions.

- (a) The premises shall be kept clean, neat and sanitary and shall comply with all sanitary and health requirements of the state, the county and the city.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) No alcoholic beverages shall be sold or provided to customers on the premises.
- (d) It shall be unlawful for any stand-alone Massage Therapy or Bodywork Therapy service (those establishments not located within a professional's office, i.e., chiropractor, doctor etc.) to be carried on within any cubicle, room, booth or other area within a massage establishment, which is fitted with a door capable of being locked.
- (e) It shall be unlawful for any person in any establishment as defined under this Article, to place his hands upon, to touch with any part of his body, to fondle in any manner, or to massage the genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.
- (f) It shall be unlawful for any person owning, operating or managing any establishment as defined under this Article, to knowingly cause, allow or permit in or about such establishment any agent, Employee or other person under his supervision or control to perform any acts prohibited under this section.
- (g) No Employees of any establishment as defined under this Article shall wear swimsuits, lingerie or similar garments or garments which expose areas described in subsection (e) of this section.
- (h) All stand-alone massage establishments (those establishments not located within a professional's office, i.e., chiropractor, doctor, etc.) which apply for a license beginning January 1, 2002, must provide a reception area with adequate seating and immediate accessible entry and exit into and from the back office and area where the treatment rooms are located.

- (i) During normal business hours as listed in this Article, no one other than a patient, a patient's legal guardian(s) and Employees of the massage establishment will be allowed beyond the reception area.
- (j) All establishments as defined under this Article shall have an owner, manager or supervisor on the premises at all hours the establishment offers Massage Therapy or Bodywork Therapy. Such owner, manager or supervisor in addition to the licensee shall be responsible to make sure all persons performing Massage Therapy or Bodywork Therapy at any time has an appropriate state license and city license, or city work permit and their failure to do so shall be a violation of this Code.
- (k) Ordinary beds or mattresses shall not be permitted in any establishment as defined under this Article;
- (l) Minimum lighting shall be provided in accordance with the Uniform Building Code, and, additionally, at least one artificial light of not less than 40 watts shall be provided in each enclosed room or booth.

Sec. 22-150. - Inspections authorized.

The code enforcement officer or his authorized representatives shall and the police may, from time to time, make inspections during regular business hours of each establishment licensed under this Article for the purposes of determining compliance with the provisions of this Article. It shall be unlawful for any licensee under this Article to fail to allow the code enforcement officer or police officer access to the premises or to hinder the officer in any manner.

Sec. 22-151. - Posting of license; transfer of license.

- (a) Every person obtaining a license under this Article shall display such certificate in a prominent place.
- (b) No license shall be transferable.

Sec. 22-152. - Reapplication after denial or revocation.

Any licensee under this Article who has his license application denied or his license revoked shall be disqualified from reapplying for such a license for 12 months immediately following the revocation or denial.

Sec. 22-153. - Change of location of business.

No licensee under this Article shall change the location of the business without applying for and receiving a new license for such location from the business license office.

Sec. 22-154. – Penalty

Any person violating any of the provisions of this Article shall be punished pursuant to Section 1-7 of the Code of Woodstock, Georgia.

Secs. 22-155—22-174. - Reserved.